

Federal Defenders
OF NEW YORK, INC.

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

Barry D. Leiwant
*Interim Executive Director
and Attorney-in-Chief*

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

April 1, 2024

By ECF & EMAIL

The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *United States v. Omar Khan,*
(S1) 20 Cr. 117 (PAE)

Dear Judge Engelmayer:

I write to respectfully request that the Court enter the attached proposed order, directing the Bureau of Prisons ("BOP") to (a) have Mr. Khan evaluated by a neurosurgeon, and (b) provide Mr. Khan with a spinal brace. The defense understands that the government has been in contact with MDC Brooklyn about these issues and does not believe that a court order is necessary at this stage. Nevertheless, BOP's failure to date to provide Mr. Khan a follow-up evaluation with a neurosurgeon or a back brace demands judicial intervention.

Mr. Khan is currently detained at Windsor Rehabilitation in Flushing, Queens due to various medical conditions, including two fractures in his back. He is awaiting sentencing, scheduled for June 10, 2024. Before he was placed at Windsor, Mr. Khan was assessed and treated at New York Presbyterian Hospital and Weill Cornell Hospital, which identified two compression fractures in his spine and recommended a follow up appointment with a neurosurgeon and use of a thoracic lumbar sacral orthosis brace (also known as a TLSO or spinal brace), along with physical and occupational therapy.

At Windsor, Mr. Khan is not receiving the follow up medical care he needs. Though Mr. Khan has now been at Windsor since March 1, 2024, he has not been evaluated by a neurosurgeon or received the recommended TSLO brace, as New York Presbyterian recommended. In addition, though Windsor represents it is providing him with daily physical and occupational therapy, in reality Mr. Khan is chained to a bed for all but 20 minutes a day on weekdays.

The defense therefore seeks the Court's intervention in improving Mr. Khan's medical care while in custody. Specifically, the defense requests that the Court order the BOP to (a) have Mr. Khan evaluated by a neurosurgeon, and (b) provide Mr. Khan with the recommended spinal brace. In light of the slow pace with which BOP has addressed Mr. Khan's medical needs to date, we further request that the Court order BOP to execute the Court's order within one week.

As noted above, the government has indicated it does not believe judicial intervention is necessary at this stage. It has informed the defense that BOP has agreed to have a neurosurgeon see Mr. Khan, but that that evaluation could take a few weeks. It has further indicated that BOP has now agreed to provide Mr. Khan with a spinal brace, but it has not provided a time frame. Accordingly, given that Mr. Khan has now spent a full month in custody with neither of these recommended treatment measures, we respectfully request that the Court enter the attached proposed order.

Respectfully submitted,

/s/ _____
Andrew John Dalack, Esq.
Hannah McCrea, Esq.
Counsel for Omar Khan

Cc: AUSA Nicholas Chiuchiolo

The Court is persuaded that its intervention will serve the interests of justice, and will sign the proposed order. The Clerk of Court is requested to terminate the motions at Dkt. Nos. 13 & 14.

SO ORDERED.

4/2/2024



PAUL A. ENGELMAYER
United States District Judge